

BEFORE THE BOARD OF ENVIRONMENTAL REVIEW
OF THE STATE OF MONTANA

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| In the matter of the amendment) | NOTICE OF AMENDMENT AND |
| of ARM 17.38.101, 17.38.201A,) | ADOPTION |
| 17.38.202, 17.38.203,) | |
| 17.38.206, 17.38.208,) | |
| 17.38.216, 17.38.229,) | (PUBLIC WATER SUPPLY AND |
| 17.38.234, 17.38.239,) | WASTEWATER SYSTEM |
| 17.38.249, 17.38.302, and the) | REQUIREMENTS) |
| adoption of new rule I) | |
| pertaining to ground water) | |
| under the direct influence of) | |
| surface water determinations) | |

TO: All Concerned Persons

1. On April 10, 2003, the Board of Environmental Review published MAR Notice No. 17-190 regarding a notice of public hearing on the proposed amendment and adoption of the above-stated rules at page 622, 2003 Montana Administrative Register, issue number 7.

2. The Board has amended ARM 17.38.101, 17.38.201A, 17.38.202, 17.38.203, 17.38.206, 17.38.208, 17.38.216, 17.38.229, 17.38.239, 17.38.302, and adopted new rule I (17.38.209) exactly as proposed. The Board has amended ARM 17.38.234 and 17.38.249 as proposed, but with the following changes, deleted matter interlined, new matter underlined:

17.38.234 TESTING AND SAMPLING RECORDS AND REPORTING REQUIREMENTS (1) and (2) remain as proposed.

(3) Actual laboratory reports may be kept or data may be transferred to tabular summaries, provided the following information is included:

(a) through (d) remain as proposed.

(e) 40 CFR 141.76(b) and (d), which set forth reporting and recordkeeping requirements for ~~lead and copper~~ the recycle provisions;

(f) through (8) remain as proposed.

17.38.249 CERTIFIED OPERATOR AND DESIGNATED CONTACT PERSON (1) remains as proposed.

(2) The owner of a public water supply or wastewater treatment system shall provide, no later than 30 days after the issuance of a written request by the department, the name, address, and telephone number of a designated person who shall be responsible for contact and communications with the department in matters relating to system alteration, extension

and construction, monitoring and sampling, maintenance, operation, record keeping, notification, and reporting. ~~For a community or a non-transient non-community public water supply or wastewater treatment system, this person must be certified in accordance with the requirements of Title 37, chapter 42, MCA.~~

(3) The owner of a public water supply or wastewater treatment system shall report any change in ~~assigned responsibilities~~ certified operator or designated persons to the department within 30 days after the change.

(4) and (5) remain as proposed.

3. The following comments were received and appear with the Board's responses:

COMMENT NO. 1: Multiple commentors were concerned with the costs associated with complying with the new arsenic standard.

RESPONSE: As part of the federal regulation development process, the Environmental Protection Agency (EPA) is required to take cost of compliance into consideration when considering regulations for promulgation. The EPA has determined that compliance with this new standard is affordable to systems of all sizes. Compliance may be achieved through various treatment types and there are certain funding sources that offer grant monies and low interest loans to qualifying systems.

To retain primary enforcement responsibility, the state of Montana, through the Board of Environmental Review (Board), is required by 40 CFR 142.12 to adopt the new arsenic standard. The Board has no leeway to deviate from this standard.

Therefore, the Board declines to make a change to the proposed rules.

COMMENT NO. 2: One commenter believes that it is unfair to group together small systems with cities and townships that have tax-funded resources.

RESPONSE: The federal and state definitions of a public water supply make no distinction as to whether a system collects taxes or not. If a system meets the definition of a public water supply, as defined in ARM 17.38.202, then it is required to meet the applicable standards. Cost issues are addressed in the response to comment #1 above.

Therefore, the Board declines to make a change to the proposed rules.

COMMENT NO. 3: One commenter stated that nothing removes arsenic.

RESPONSE: As part of the federal regulation development process, the EPA is required to take availability of treatment into consideration when considering regulations for promulgation. The EPA has identified Best Available Treatment (BAT's) technologies for compliance with this new standard. Compliance may be achieved through various treatment types, including various central treatment options and Point-of-Use/Point-of-Entry devices.

The state of Montana, through the Board, has adopted by reference 40 CFR Part 141, which contains tables indicating the BAT's for individual contaminants.

Therefore, the Board declines to make a change to the proposed rules.

COMMENT NO. 4: A commenter suggested sending the arsenic rule back to the federal government.

RESPONSE: As a primacy state, the state of Montana is required by 40 CFR 142.12 to have laws and rules at least as stringent as the federal requirements regulating public water supplies. Through the federal regulation adoption process, the EPA accepts and responds to public comments. The public comment period for the federal regulation adoption process would have been the correct forum in which to make this suggestion.

Therefore, the Board declines to make a change to the proposed rules.

COMMENT NO. 5: A commenter was concerned with the costs associated with complying with a new radon standard.

RESPONSE: These rule amendments do not contain a proposal to adopt a radon standard. In fact, the EPA has put the proposed federal radon regulation on hold.

Therefore, the Board is not proposing to adopt a radon standard and declines to make a change to the proposed rules.

BOARD OF ENVIRONMENTAL REVIEW

By:

JOSEPH W. RUSSELL, M.P.H.
Chairman

Reviewed by:

JAMES M. MADDEN, Rule Reviewer

Certified to the Secretary of State, _____, 2003.